

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11884 of 2014

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Rajendra Kumar Singh, son of Ramashish Singh, Resident of village- Braon, P.S. +
Block- Nokha, District- Rohtas.

.... Petitioner/s

Versus

Ramjag Singh, son of Late Ram Lakhan Singh, Resident of village- Baraon, P.S.-
Nokha, P.O.- Baraon, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-08-2016

Heard learned counsel for the petitioner.

The plaintiff is the petitioner and has filed this application under Article 227 of the Constitution of India assailing the order by which the learned court below has turned down his prayer to implead his father and brother as party-defendants in the suit.

It transpires from the averments made in the application and also from the perusal of the impugned order that the suit has been filed by the plaintiff for removal of encroachment over the suit land on the basis of title. The averments made in the plaint (Annexure-1) clearly demonstrate that the suit land (encroached land) has been described in schedule-A of the plaint in the rough sketch map by red color. During the pendency of the suit, a petition was filed on behalf



of the plaintiff to implead his father and brother as party-defendants in the suit on the ground that there had been partition in between the plaintiff and his father and brother and in that partition the suit land was allotted to the plaintiff. The learned court below, by the impugned order, has concluded that the plaintiff has not disclosed the fact of partition by producing any supporting document in that regard. It has also been observed that this fact of partition was within the personal knowledge of the plaintiff on the date of the filing of the suit but the same has not been mentioned in the plaint. The learned court below, therefore, by the impugned order has rejected the prayer of the plaintiff, as prayed.

Learned counsel for the petitioner has submitted that as the suit has been filed for declaration of title of the plaintiff over the suit land and therefore the father and brother of the plaintiff who have been prayed to be impleaded as parties in the suit are necessary parties. It has, therefore, been submitted that the learned court below has committed material irregularity in rejecting the prayer of the plaintiff.

After considering the submissions and the perusal of the impugned order, it is manifest that the suit has been filed by the plaintiff for removal of encroachment over the land described in schedule A of the plaint on the basis of his title. It has, thus, been

abundantly clear that the suit is essentially for removal of encroachment. Further the plaintiff-petitioner has also not disclosed the date of partition with his father and brother as found by the learned court below. In any view of the matter, however, it also does not appear from the averments made in the plaint (Annexure-1) that the father and brother of the plaintiff are in any manner necessary parties to the suit for determination of the issues arising between the parties to the suit as required under Order 1 Rule 10 C.P.C.

This Court therefore is not inclined to interfere with the impugned order by invoking the jurisdiction under Article 227 of the Constitution of India. The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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